

SENATE BILL 88

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2004 Regular Session  
4lr0646  
CF 4lr0742

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By: **Senators Frosh, Ruben, and Hooper**  
Introduced and read first time: January 16, 2004  
Assigned to: Finance

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: February 25, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Commercial Law - Maryland Telephone Consumer Protection Act**

3 FOR the purpose of prohibiting a person from violating the federal Telemarketing and  
4 Consumer Fraud and Abuse Prevention Act or the federal Telephone Consumer  
5 Protection Act; providing that a violation of this Act is an unfair or deceptive  
6 trade practice and is subject to certain enforcement actions and penalties;  
7 authorizing an individual who is affected by a violation of this Act to bring an  
8 action against a violator to recover reasonable attorney's fees and damages in a  
9 certain amount; providing that each prohibited telephone solicitation and each  
10 prohibited practice during a telephone solicitation is a separate violation of this  
11 Act; providing that this Act does not apply to certain telephone calls initiated for  
12 a charitable organization by certain persons; expressing the intent of the  
13 General Assembly; defining certain terms; and generally relating to telephones  
14 and consumer protection.

15 BY repealing and reenacting, with amendments,  
16 Article - Commercial Law  
17 Section 13-301(14)  
18 Annotated Code of Maryland  
19 (2000 Replacement Volume and 2003 Supplement)

20 BY adding to  
21 Article - Commercial Law  
22 Section 14-3201 through ~~14-3203~~ 14-3204, inclusive, to be under the new  
23 subtitle "Subtitle 32. Maryland Telephone Consumer Protection Act"  
24 Annotated Code of Maryland  
25 (2000 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Commercial Law**

4 13-301.

5 Unfair or deceptive trade practices include any:

6 (14) Violation of a provision of:

7 (i) This title;

8 (ii) An order of the Attorney General or agreement of a party  
9 relating to unit pricing under Title 14, Subtitle 1 of this article;

10 (iii) Title 14, Subtitle 2 of this article, the Maryland Consumer Debt  
11 Collection Act;

12 (iv) Title 14, Subtitle 3 of this article, the Maryland Door-to-Door  
13 Sales Act;

14 (v) Title 14, Subtitle 9 of this article, Kosher Products;

15 (vi) Title 14, Subtitle 10 of this article, Automotive Repair Facilities;

16 (vii) Section 14-1302 of this article;

17 (viii) Title 14, Subtitle 11 of this article, Maryland Layaway Sales  
18 Act;

19 (ix) Section 22-415 of the Transportation Article;

20 (x) Title 14, Subtitle 20 of this article;

21 (xi) Title 14, Subtitle 15 of this article, the Automotive Warranty  
22 Enforcement Act;

23 (xii) Title 14, Subtitle 21 of this article;

24 (xiii) Section 18-107 of the Transportation Article;

25 (xiv) Title 14, Subtitle 22 of this article, the Maryland Telephone  
26 Solicitations Act;

27 (xv) Title 14, Subtitle 23 of this article, the Automotive Crash Parts  
28 Act;

29 (xvi) Title 10, Subtitle 6 of the Real Property Article;

30 (xvii) Title 10, Subtitle 8 of the Real Property Article;

1 (xviii) Title 14, Subtitle 25 of this article, the Hearing Aid Sales Act;

2 (xix) Title 14, Subtitle 26 of this article, the Maryland Door-to-Door  
3 Solicitations Act;

4 (xx) Title 14, Subtitle 31 of this article, the Maryland Household  
5 Goods Movers Act; or

6 (XXI) TITLE 14, SUBTITLE 32 OF THIS ARTICLE, THE MARYLAND  
7 TELEPHONE CONSUMER PROTECTION ACT; OR

8 SUBTITLE 32. MARYLAND TELEPHONE CONSUMER PROTECTION ACT.

9 14-3201.

10 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
11 INDICATED.

12 (B) "CHARITABLE ORGANIZATION" HAS THE MEANING STATED IN § 6-101 OF  
13 THE BUSINESS REGULATION ARTICLE.

14 ~~(B)~~ (C) "CONSUMER" HAS THE MEANING STATED IN § 13-101 OF THIS  
15 ARTICLE.

16 ~~(C)~~ (D) "CONSUMER CREDIT", "CONSUMER GOODS", "CONSUMER REALTY",  
17 AND "CONSUMER SERVICES" HAVE THE MEANINGS STATED IN § 13-101 OF THIS  
18 ARTICLE.

19 ~~(D)~~ (E) "DIVISION" MEANS THE DIVISION OF CONSUMER PROTECTION OF  
20 THE OFFICE OF THE ATTORNEY GENERAL.

21 (F) "PROFESSIONAL SOLICITOR" HAS THE MEANINGS STATED IN § 6-101 OF  
22 THE BUSINESS REGULATION ARTICLE.

23 ~~(F)~~ (G) "TELEPHONE SOLICITATION" MEANS A TELEPHONE CALL  
24 INITIATED FOR THE PURPOSE OF ENCOURAGING THE SALE, LEASE, RENTAL, LOAN,  
25 OR BAILMENT OF CONSUMER CREDIT, CONSUMER GOODS, CONSUMER REALTY, OR  
26 CONSUMER SERVICES.

27 14-3202.

28 THIS SUBTITLE DOES NOT APPLY TO A TELEPHONE CALL INITIATED FOR A  
29 CHARITABLE ORGANIZATION BY A PERSON THAT IS NOT A PROFESSIONAL  
30 SOLICITOR.

31 ~~14-3202.~~ 14-3203.

32 A PERSON MAY NOT VIOLATE:

33 (1) THE TELEMARKETING AND CONSUMER FRAUD AND ABUSE  
34 PREVENTION ACT, 15 U.S.C. §§ 6101 THROUGH 6108, AS IMPLEMENTED BY THE

1 FEDERAL TRADE COMMISSION IN THE TELEMARKETING SALES RULE (16 C.F.R. PART  
2 310); OR

3 (2) THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, AS  
4 IMPLEMENTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN THE  
5 RESTRICTIONS ON TELEMARKETING AND TELEPHONE SOLICITATIONS RULE (64 C.F.R.  
6 SUBPART L).

7 ~~14-3203.~~ 14-3204.

8 (A) A VIOLATION OF THIS SUBTITLE IS AN UNFAIR OR DECEPTIVE TRADE  
9 PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE AND IS SUBJECT TO  
10 THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS  
11 ARTICLE.

12 (B) IN ADDITION TO THE REMEDIES PROVIDED IN § 13-408 OF THIS ARTICLE,  
13 AN INDIVIDUAL WHO IS AFFECTED BY A VIOLATION OF THIS SUBTITLE MAY BRING  
14 AN ACTION AGAINST A PERSON THAT VIOLATES THIS SUBTITLE TO RECOVER:

15 (1) REASONABLE ATTORNEY'S FEES; AND

16 (2) DAMAGES IN THE AMOUNT OF THE GREATER OF:

17 (I) \$500 FOR EACH VIOLATION; OR

18 (II) ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE  
19 VIOLATION.

20 (C) FOR PURPOSES OF THIS SECTION, EACH PROHIBITED TELEPHONE  
21 SOLICITATION AND EACH PROHIBITED PRACTICE DURING A TELEPHONE  
22 SOLICITATION IS A SEPARATE VIOLATION.

23 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the  
24 General Assembly that the Division of Consumer Protection of the Office of the  
25 Attorney General process and pursue, as authorized in Title 14, Subtitle 32 of the  
26 Commercial Law Article, as enacted by Section 1 of this Act, only extreme cases of  
27 violations of the National Do Not Call Registry in an effort to keep investigation and  
28 enforcement costs minimal or, to the extent possible, within existing resources.

29 ~~SECTION 2-3.~~ AND BE IT FURTHER ENACTED, That this Act shall take  
30 effect June 1, 2004.

